

**REMARKS:**

**Status Of Claims**

Claims 1-12 and 21-25 were previously pending, claims 1-3, 9-11, and 25 have been amended, and claim 26 has been added. Thus, claims 1-12 and 21-26 are currently pending in the application with claims 1, 21, 25, and 26 being independent.

**Office Action**

In the office action, the Examiner suggested that claims 21-25 were directed to an invention that is independent or distinct from the originally claimed invention, and therefore withdrew claims 21-25 as being directed to a non-elected invention. While there was a restriction requirement imposed, Applicant respectfully disagrees that the currently pending claims are directed to a non-elected invention. Group 1 included independent claim 1 and claimed a drainage system comprising a frame, a grate, and a locking element. Group 2 included independent claim 13 and claimed a grate comprising a plurality of tread bars, a plurality of cross-bars, and a flange. Group 3 included independent claim 19 and claimed a crossbar for a grate.

Applicant elected Group 1. Claims 21-25 are also directed toward a drainage system comprising a frame, a grate, and a locking element, and are therefore included in Group 1. Specifically, claims 21-25 include all of the elements of claim 1, but add further limitations to the elements of claim 1. Therefore, claims 21-25 are more specific, and therefore narrower, than claim 1. As a result, claims 21-25 are simply directed to the same invention originally claimed in Group 1.

In support of his action, the Examiner suggests that claims 21-25's recitation of upwardly oriented ledges presents a structure which is patentably distinct from the originally elected invention. However, the ledges recited in claims 21-25 were previously recited in elected Group 1, albeit not as narrowly. For example, Group 1 also includes

claim 2, which originally recited “wherein the frame includes ledges for supporting the crossbars”. Figures 2 and 7 clearly show the ledges 28 as part of the frame 14 of elected Group 1. Figures 2 and 7 also show that the ledges 28 are preferably upwardly oriented, as claimed in claims 21-25. Thus, Group 1 previously included a claim directed to a frame having “ledges” and, in one disclosed embodiment, the ledges were upwardly oriented.

Therefore, Applicant disagrees with the Examiner’s withdrawal of claims 21-25. As a result of this improper withdrawal, claims 21-25 have not received an action on the merits and such action is courteously requested. Furthermore, Applicant believes that making the latest rejections final is improper, since claims 21-25 were properly presented in Applicant’s last amendment and were improperly withdrawn by the Examiner. Therefore, Applicant request that the final rejection be withdrawn, prosecution be held open, and fees associated with the accompanying Request for Continued Examination be refunded.

The Examiner also rejected claims 1-3, 6-8, and 11 under 35 U.S.C. 102(b) as being anticipated by Maguire, U.S. Patent No. 3,881,832. Applicant respectfully asserts that the currently pending claims distinguish the present invention from the prior art made of record.

For example, claim 1 now recites “a frame physically distinct with respect to but operable to be set within the watercourse and span at least two opposing edges of the watercourse”, “a grate physically distinct with respect to but operable to be set within the frame”, and “a locking element operable to be secured to the flange and contact the frame in order to secure the grate within the frame wherein the locking element is physically distinct with respect to both the frame and the grate”. Thus, as argued in a previous amendment, the frame, the grate, and the locking element are three separate and distinct elements that cooperate to securely cover the watercourse, such that the grate cannot be lifted from the watercourse.

In contrast, as previously argued, the Examiner refers to Maguire's grate (4) as being analogous to the frame of the present invention. The Examiner also refers to Maguire's protective insert (10) as being analogous to the grate of the present invention. Finally, the Examiner refers to Maguire's wall dividers (6) as being analogous to the locking element of the present invention. However, as previously argued, disclosed by Maguire in column 2, lines 43-45, and shown by Maguire in figures 1 and 2, Maguire's grating (4) includes a perimeter (5) and wall dividers (6) as one physical element. As Maguire clearly teaches of the wall dividers (6) being part of a grating (4), which also includes a perimeter (5), Maguire simply cannot anticipate "a locking element [that] is physically distinct with respect to both the frame and the grate", as claimed in claim 1.

Apparently alternatively, the Examiner analogizes the perimeter (5) of the grate (4) to the frame of the present invention, the protective insert (10) to the grate of the present invention, and the wall dividers (6) to the locking element of the present invention. However, as discussed above, Maguire's wall dividers (6) are clearly part of his grate (4) and not "physically distinct with respect to both the frame and the grate", as claimed in claim 1. In the end, whether Maguire's grate (4) is analogous to the grate or the frame of the present invention is irrelevant, at least in this regard, because the locking element claimed in claim 1 is separate and distinct from both. As a result, Maguire simply cannot anticipate "a locking element operable to be secured to the flange and contact the frame in order to secure the grate within the frame wherein the locking element is physically distinct with respect to both the frame and the grate", as claimed in claim 1.

Claim 3 recites "wherein the frame includes downwardly extending shelves for engaging the locking element". Claim 3 clearly requires the shelves to be part of the frame and engage, but be separate from, the locking element. If there were any doubt, as discussed above, claim 1, upon which claim 3 depends, now claims "a locking element [that] is physically distinct with respect to both the frame and the grate". Thus, the

Examiner's assertion that Maguire's "locking element (6) meets the recitation of shelves" cannot stand. Specifically, Applicant asserts that a locking element that is positively recited to be "physically distinct with respect to" a frame cannot meet limitations positively assigned to the frame. Thus, Maguire cannot anticipate, "wherein the **frame** includes downwardly extending shelves for engaging the locking element", emphasis added, as claimed in claim 3.

Claim 11 now recites "wherein the locking element is a flat bar for spanning the frame below the shelves of the frame". As discussed above, claim 1, upon which claim 11 depends, now claims "a locking element [that] is physically distinct with respect to both the frame and the grate". Applicant asserts that none of the prior art references made of record discloses, suggests, or makes obvious a locking element that "is physically distinct with respect to both the frame and the grate" spanning the frame from below any portion of the frame.

The Examiner also rejected claims 4, 5, 9, 10, and 12 under 35 U.S.C. 103(a) as being unpatentable over Maguire. Applicant respectfully asserts that the currently pending claims distinguish the present invention from the prior art made of record. Specifically, claim 10 now recites "wherein the locking element includes a substantially horizontal member operable to receive the bolt and at least one substantially vertical member operable to engage the frame by sliding upwardly and behind the shelves". Thus, claim 10 is clearly directed to a locking element similar to that shown in Figure 2, rather than that shown in Figure 5. Figure 2 clearly shows a horizontal member (40) for receiving a bolt (36) and vertical members (44) for engaging shelves (32) of the frame (14) by sliding behind the shelves (32). It should be apparent that claim 10 is directed to the locking element, not the frame or the grating.

In contrast, in the first action on the merits, the Examiner stated that Maguire's "locking element includes horizontal (5) and vertical (6) elements. However, as

discussed above, Maguire's perimeter (5) and wall dividers (6) are physically part of Maguire's grating (4). Additionally, as discussed above, the locking element of the present invention "is physically distinct with respect to both the frame and the grate" of the present invention, and therefore elements of the frame or grate cannot be attributed to the locking element.

In the latest action, the Examiner only asserts that the "horizontal member of Maguire could receive a bolt and that the vertical member does engage the frame. However, Maguire does not disclose or suggest any horizontal member receiving a bolt, or being potentially being modified to receive a bolt. In contrast, Maguire clearly teaches a protective insert (10) designed to be installed without the use of tools. Therefore, modifying Maguire to accept a bolt would extend well beyond Maguire's teaching, if not contrary thereto.

Furthermore, Maguire's protective insert (10) is secured by sliding it down over his grating (4). Clearly, sliding Maguire's protective insert (10), or any part thereof, "upwardly" would tend to detach the protective insert (10) from the grate (4) and surely disengage it from any frame. Thus, Maguire actually teaches away from a locking element engaging a frame by sliding upwardly. As a result, Maguire simply does not disclose, suggest, or make obvious "wherein the **locking element** includes a substantially horizontal member operable to engage the bolt and at least one substantially vertical member operable to **engage the frame by sliding upwardly** and behind the shelves", emphasis added, as claimed in claim 10.

As discussed above, claims 21-25 are also directed to Group 1, but were not previously examined. Applicant asserts that claims 21-25 distinguish the present invention over the prior art made of record.

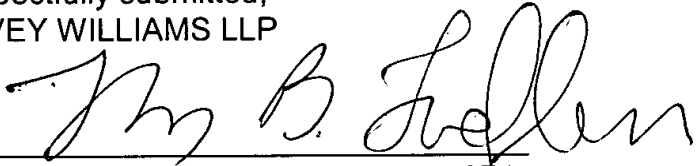
Claim 26 has been added to further distinguish the present invention over the prior art made of record. The remaining claims all depend directly or indirectly from

independent claim 1, and are therefore also allowable. In view of the foregoing, a Notice of Allowance appears to be in order and such is courteously solicited.

Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 19-0522.

Respectfully submitted,  
HOVEY WILLIAMS LLP

By:



Thomas B. Luebbering, Reg. No. 37,874  
2405 Grand Boulevard, Suite 400  
Kansas City, Missouri 64108  
(816) 474-9050  
ATTORNEYS FOR APPLICANT

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